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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,314	03/06/2001	Peter V. Radatti	17-00	2982

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EXAMINER	
REVAK, CHRISTOPHER A	
ART UNIT	**PAPER NUMBER**
2131	

DATE MAILED: 07/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/800,314	RADATTI ET AL.	
	Examiner	Art Unit	
	Christopher A. Revak	2131	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 May 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *06 March 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed have been fully considered but they are not persuasive.

The applicant argues that the amended limitations "whereby said scanner reintroduces to the communication channel all, some, or none of the intercepted code" is not taught by both Hawe and Ranger.

The examiner respectfully disagrees, the teachings of Ranger are relied upon for disclosing that the scanner reintroduces to the communication channel all, some, or none of the intercepted code, see column 4, lines 38-50 and column 6, lines 24-28 & 32-43. Ranger indicates that the decrypted file is scanned for viruses prior to being transmitted to other computers. The file is either sent as a whole, or with the viral information removed, or the file is blocked from transmission and a message is sent to the user. The examiner notes that these limitations are only recited in independent claims 1 and 14.

It is additionally argued by the applicant that the examiner has not shown a teaching of "a protocol parser with intercepts which intercepts code traveling on a communication channel and transmits the code for review by a code scanner, wherein the code is reintroduced to the communication channel". The applicant indicates that examiner deems the structure protocol parser as being a control state machine.

The examiner disagrees with the applicant's assertions. Hawe indeed does intercept code since it is disclosed that parsing of incoming packets is used to identify the protocol to generate the packet and extracting sufficient information from the packet header to determine if, and what type of encryption is needed, see column 10, lines 38-44. Some means is necessary in order to determine how to parse the packets in order to determine the protocol type, Hawe does disclose of the use of a control state machine as indicated by the applicant, however if the claimed "protocol parser" is different from the prior art of record, the claims do not distinguish that different. The examiner is broadly interpreting the protocol parser as determining the type of protocol the packet is. The teachings of Ranger are relied upon for disclosing that the scanner reintroduces to the communication channel all, some, or none of the intercepted code, see column 4, lines 38-50 and column 6, lines 24-28 & 32-43. Ranger indicates that the decrypted file is scanned for viruses prior to being transmitted to other computers. The file is either sent as a whole, or with the viral information removed, or the file is blocked from transmission and a message is sent to the user.

2. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., wherein the code is reintroduced to the communication channel) are not recited in the rejected claims 7 and 8. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

3. The applicant has indicated that if the examiner maintains the nonstatutory obviousness-type double patenting rejection, a terminal disclaimer would be filed. The examiner is maintaining the obviousness-type double patenting rejection.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4-17 of copending Application No. 09/800,328. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-14 of the instant application are envisioned by copending Application No. 09/800,328 in that claims 4-17 of the copending application contain all the limitations of claims 1-14 of the instant

application. Claims 1-14 of the instant application therefore is not patentably distinct from the copending application, and as such, is unpatentable for obvious-type double patenting.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claims 1-14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over 1-36 of copending Application No. 10/655,387. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-14 of the instant application are envisioned by copending Application No. 10/655,387 in that claims 1-36 of the copending application contain all the limitations of claims 1-14 of the instant application. Claims 1-14 of the instant application therefore is not patentably distinct from the copending application, and as such, is unpatentable for obvious-type double patenting.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 1-14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 09/838,979. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-14 of the instant application are envisioned by copending Application No. 09/838,979 in that claims 1-12 of the copending application contain all the limitations of claims 1-14 of the instant application. Claims 1-14 of the instant application therefore is not patentably distinct

from the copending application, and as such, is unpatentable for obvious-type double patenting.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawe et al, U.S. Patent 5,070,528 in view of Ranger et al, U.S. Patent 6,393,568.

As per claims 1 and 14, it is taught by Howe et al of an apparatus and method for intercepting and processing code on a communications channel. The protocol is parsed (by means of a protocol parser) and then transferred to be decrypted (by means of a decryption component)(col. 10, lines 38-44 and col. 10, line 63 through col. 11, line 1) and it is interpreted by the examiner that the code is intercepted by the protocol parsing means as it is transmitted through the communication channel since it is disclosed by Hawe et al that the basic step of identifying the protocol (by means of a protocol scanner) used to generate the packets determines which type of encryption is needed (col. 10, lines 38-44). The teachings of Hawe et al fail to disclose of a proscribed code scanner that scans the decrypted code and that the scanner reintroduces to the

communication channel all, some, or none of the intercepted code. It is disclosed by Ranger et al that encrypted information is decrypted prior to scanning by a content inspection mechanism (proscribed code scanner)(col. 2, lines 40-43 & 58-61). Ranger et al teaches of indicating the presence of the proscribed code if the indicator is positive (col. 6, lines 32-43). The scanner reintroduces to the communication channel all, some, or none of the intercepted code (col. 4, lines 38-50 and col. 6, lines 24-28 & 32-43). It would have been obvious to a person of ordinary skill in the art at the time of the invention to have been motivated to apply decryption prior to scanning for viruses. Ranger et al discloses motivational benefits by decrypting code prior to scanning for viruses by reciting by discussing a need for detecting viruses in communications received in encrypted form such that it would provide virus detection in real time for a communication system (col. 1, lines 58-64) and virus programs are not able to decrypt encrypted information (col. 1, lines 21-23). It would have been obvious that the teachings of Hawe et al would have found the teachings of Ranger et al beneficial as a means of efficiently scanning encrypted files for viruses by decrypting the files prior to scanning for viruses to provide real time content inspection for viruses.

As per claims 2 and 3, Hawe et al discloses of intercepting code prior to decrypting the encrypted code (col. 10, lines 38-44). It is interpreted by the examiner that the secure/altered code is intercepted by the protocol parsing means in as it is transmitted through the communication channel since it is disclosed by Hawe et al that the basic step of identifying the protocol (by means of a protocol scanner) used to generate the packets determines which type of encryption is needed (col. 10, lines 38-

44). Ranger et al is relied upon for disclosing that encrypted information is decrypted prior to scanning by a content inspection mechanism (proscribed code scanner in a separate system)(col. 2, lines 40-43 & 58-61). The presence of the proscribed code is indicated if the indicator is positive (by means of an indicator)(col. 6, lines 32-43). Please refer above for the motivational benefits of the teachings of Ranger et al as applied to Hawe et al.

As per claims 4 and 13, Ranger et al teaches of scanning the code for the presence of proscribed code further comprising scanning the code for the presence of viruses (col. 6, lines 32-43).

As per claims 5,6, and 11, it is interpreted by the examiner that the code is configured for interception parameters by the protocol parsing means in as it is transmitted through the communication channel since it is disclosed by Hawe et al that the basic step of identifying the protocol (by means of a protocol scanner preconfigured) used to generate the packets determines which type of encryption is needed (col. 10, lines 38-44).

As per claims 7 and 8, it is taught by Howe et al of an apparatus and method for intercepting and processing code on a communications channel. The protocol is parsed (by means of a protocol parser) and then transferred to be decrypted (by means of a decryption component)(col. 10, lines 38-44 and col. 10, line 63 through col. 11, line 1) and it is interpreted by the examiner that the code is intercepted by the protocol parsing means as it is transmitted through the communication channel since it is disclosed by Hawe et al that the basic step of identifying the protocol (by means of a protocol

scanner) used to generate the packets determines which type of encryption is needed (col. 10, lines 38-44). The teachings of Hawe et al fail to disclose of a proscribed code scanner that scans the decrypted code. It is disclosed by Ranger et al that encrypted information is decrypted prior to scanning by a content inspection mechanism (proscribed code scanner)(col. 2, lines 40-43 & 58-61). Ranger et al teaches of indicating the presence of the proscribed code if the indicator is positive (col. 6, lines 32-43). It would have been obvious to a person of ordinary skill in the art at the time of the invention to have been motivated to apply decryption prior to scanning for viruses. Ranger et al discloses motivational benefits by decrypting code prior to scanning for viruses by reciting by discussing a need for detecting viruses in communications received in encrypted form such that it would provide virus detection in real time for a communication system (col. 1, lines 58-64) and virus programs are not able to decrypt encrypted information (col. 1, lines 21-23). It would have been obvious that the teachings of Hawe et al would have found the teachings of Ranger et al beneficial as a means of efficiently scanning encrypted files for viruses by decrypting the files prior to scanning for viruses to provide real time content inspection for viruses.

As per claim 9, Ranger et al discloses of re-encrypting (returning) code if it is fully trusted (indicator is negative)(col. 7, lines 20-27). Please refer above for the motivational benefits of the teachings of Ranger et al as applied to Hawe et al.

As per claim 10, Ranger et al teaches of indicating the presence of the proscribed code if the indicator is positive (col. 6, lines 32-43). Please refer above for the motivational benefits of the teachings of Ranger et al as applied to Hawe et al.

As per claim 12, Hawe et al discloses of intercepting code prior to decrypting the encrypted code (col. 10, lines 38-44). Ranger et al is relied upon for disclosing that encrypted information is decrypted prior to scanning by a content inspection mechanism (proscribed code scanner in a separate system)(col. 2, lines 40-43 & 58-61). The presence of the proscribed code is indicated if the indicator is positive occurring on a separate machine (col. 6, lines 32-43). Please refer above for the motivational benefits of the teachings of Ranger et al as applied to Hawe et al.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher A. Revak whose telephone number is 571-272-3794. The examiner can normally be reached on Monday-Friday, 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CR

July 19, 2006

CHRISTOPHER REVAK
PRIMARY EXAMINER

7/19/06